



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

Order Instituting Rulemaking into the Review of the
California High Cost Fund B Program.

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**OPENING COMMENTS OF COX CALIFORNIA TELCOM, L.L.C.,
DBA COX COMMUNICATIONS ON COMMISSIONER CHONG'S
PROPOSED INTERIM OPINION IMPLEMENTING
CALIFORNIA ADVANCED SERVICES FUND**

Douglas Garrett
Cox Communications
2200 Powell St., Suite 1035
Emeryville, CA 94608
T: 510.923.6222
E: douglas.garrett@cox.com

Esther Northrup
Cox Communications
5159 Federal Blvd.
San Diego, CA 92105
T: 619.266.5315
E: esther.northrup@cox.com

Margaret L. Tobias
Mandell Law Group, PC
Three Embarcadero Center, Sixth Fl.
San Francisco, CA 94111
T: 415.869.6772
E: mtobias@mlawgroup.com
Attorney for Cox Communications

Dated: December 10, 2007

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Summary of Cox's Recommendations

To the extent that the Commission adopts the CASF, Cox respectfully requests that the Commission adopt a narrowly tailored CASF that:

- Will fund deployment of broadband facilities only in unserved areas of the State;
- Is designed and administered on a competitively- and technology- neutral basis;
- Is consistent with the Commission's prior universal service goals and corresponding programs;
- Will not undermine the policies adopted in the Uniform Regulatory Framework, but rather, encourages and facilitates competition without reliance on end-user funded subsidies; and
- Will not be implemented in such a way as to fund the ILEC's upgrading their broadband facilities in areas where they already provide telephone and DSL broadband services.

Introduction and Background.

Pursuant to the Commission's Rules of Practice and Procedure ("Rules"), Cox California Telecom, L.L.C., *dba* Cox Communications (U-5684-C) ("Cox") submits these timely opening comments on the proposed Decision of Commissioner Chong, titled "Interim Opinion Implementing California Advanced Services Fund" ("Proposed Decision" or "PD").

The Commission has a long history of adopting and administering public policy programs focused on increasing telephone service subscribership. To achieve its universal service goals to date, the Commission has consistently and carefully balanced those goals with the goal of limiting the surcharges California consumers must pay to fund the Commission's universal service programs. The Commission's action in D. 07-09-020 is noteworthy in that the Commission significantly reformed the California High-Cost Fund-B by reducing the size of that fund by 74%, and thereby, significantly reducing the monies that California telecommunications consumers must pay via the CHCF-B end-user surcharge.

Whereas D.07-09-020 reduced an over-sized and over-encompassing high-cost fund, the Proposed Decision would require consumers to fund the California Advanced Services Fund ("CASF"), a new program intended to advance broadband deployment, which is not yet sufficiently tailored to achieve the Commission's universal service or public policy goals.¹ Cox appreciates the Commission's efforts in examining ways to expand broadband services in California but it cannot support the Proposed Decision without modification in that it unnecessarily authorizes \$100 million dollars in funding for the deployment of broadband infrastructure, including funding to areas where broadband providers already offer services without subsidies. As proposed, the CASF program is counter to the competitive marketplace the Commission recognized in URF and will necessarily undermine and disrupt future investment in the State.

Cox is concerned that the proposed CASF is not limited to unserved areas, or even high-cost areas, but rather, is designed to fund both "unserved" and "underserved areas." If adopted, consumers would not truly enjoy the benefits of a reduced CHCF-B, but instead, be required to fund projects to expand the ILECs' broadband networks and upgrade their existing broadband facilities anywhere in their

¹ PD, p. 10.

service territories.² Perversely, upon becoming de-regulated and treated more like competitive local exchange carriers, AT&T and Verizon — and their unregulated broadband affiliates-- would have the opportunity under the PD to receive large subsidies as if they were still operating as rate-regulated ILECs. In light of the full pricing flexibility granted to AT&T, Verizon, SureWest and Citizens under URF, the proposed PD is at best premature in establishing new subsidies for competitive services (that the Commission does not regulate).

Parties commenting on the AC Ruling submitted detailed reservations about the Commission pursuing implementation of CASF. Surprisingly, the PD relies on unconfirmed foreign studies and a blog to support prioritizing broadband deployments where “standard” 3 mbps download speed and 1mbps upload speed (hereafter “3 mbps/1mbps”) are not already available. As detailed below, such reliance is fundamentally misplaced. And just as problematic, the PD does not overcome parties’ comments opposing the conclusions that the PD would adopt.

To the extent that the Commission adopts the CASF, Cox respectfully requests that the Commission adopt a narrowly tailored CASF that:

- Will fund deployment of broadband facilities only in unserved areas³ of the State;
- Is designed and administered on a competitively- and technology- neutral basis;
- Is consistent with the Commission’s prior universal service goals and corresponding programs;
- Will not undermine the policies adopted in the Uniform Regulatory Framework, but rather, encourages and facilitates competition without reliance on end-user funded subsidies; and
- Will not be implemented in such a way as to fund the ILEC’s upgrading their broadband facilities in areas where they already provide telephone and DSL broadband services.

² The PD properly states that “Limiting universal service support to particular technologies skews competitive forces, and in some cases, may even prevent consumers in high cost areas from ever receiving advanced communication services and the economic and social benefits that flow from such services.” PD, p. 6.

³ Unserved should be defined as an area having no broadband Internet access provider.

While there are a number of deficiencies with the proposed CASF program, application process and funding mechanism, Cox limits these comments to the proposed scope of the CASF. Specifically the PD errs by proposing to fund broadband deployment at 3 mbps/1mbps speeds throughout the State, without regard to high-cost areas or whether another broadband provider exists. As detailed below, the Commission should remedy this legal infirmity by limiting funding to projects only in unserved areas where market conditions have not provided sufficient incentive for commercial investment by any provider.

II. If Adopted, CASF Should Fund Projects In Unserved Areas Of California And Not Underserved Areas.

A. CASF Funding For Underserved Areas Is Not Consistent With The Competitive Marketplace Fostered By The Commission Or Expressly Permitted By The California Public Utilities Code.

The Proposed Decision would erroneously allocate funding to carriers deploying broadband facilities in both unserved and underserved areas. Such a broad undertaking is fundamentally misplaced and not supported by the record in this proceeding. First, to be consistent with the California Public Utilities Code⁴ and the Commission's universal service goals, the Commission should allocate CASF funding on a competitively- and technology-neutral basis for projects in unserved areas.⁵ As proposed, none of the \$100 million planned funding is reserved for increasing either broadband or telephone service subscribership in areas where such services are not yet available. Second, it would be anti-competitive and counter to the recently adopted Uniform Regulatory Framework for the Commission to subsidize the deployment of services in areas where at least one other provider has made the commercial investment to deploy broadband facilities. For example, where a carrier or cable provider has made the investment to deploy a broadband network, over which multiple services may be offered, including local and long-distance services, subsidized entry or speed upgrades in the same service area by a CASF-funded

⁴ All section references are to the California Public Utilities Code, unless otherwise stated.

⁵ The PD states that the CASF will be administered in the same manner as CHCF-B. Section 739.3 governs CHCF-B and Section 739.3(c) requires the Commission to establish a "competitively neutral" program. See also, Section 709; D.96-10-066; 47 U.S.C. § 253(b); and Executive Order S-23-06 of Governor Schwarzenegger (November 2006).

“competitor” would wholly undermine the competitive framework that the Commission has fostered since it first authorized competition in California over a decade ago.

Third, under the Digital Infrastructure and Video Competition Act (“DIVCA”), telephone corporations may now obtain state-issued franchises to deploy their broadband networks to provide video, among other services.⁶ AT&T and Verizon have each obtained a certificate under DIVCA and they each must comply with certain build-out requirements to ensure that low-income and rural citizens receive broadband services.⁷ AT&T and Verizon voluntarily obtained DIVCA franchises, and thereby, have already elected to more widely deploy their broadband networks in their service territories. They did so because it was a commercially viable – and most likely very profitable - undertaking. Accordingly, it is improper for the Commission to design a universal service fund with approximately \$100 million in end-user surcharges to subsidize broadband deployment that AT&T and Verizon should undertake, at least in part, under DIVCA.

B. The CASF Would Undermine The Commission’s Universal Service Goals By Failing to Prioritize Funding For Projects In Unserved Areas Over Projects In Underserved Areas.

Generally, the Proposed Decision uniformly refers to unserved and underserved areas as if they were one in the same but the PD does state that applications for unserved areas will have a “higher priority.”⁸ While the PD is premised on deployment of broadband services, including applications supporting voice-grade service, to consumers who do not have access to such services in rural and remote areas,⁹ it provides no guarantee or requirement that subscribership of either service will increase due to CASF or that consumers who lack such services today will actually have access to such services in the future. The PD errs by not requiring carriers to submit projects in unserved areas first. Funding underserved areas before unserved areas would undermine both the Commission’s universal service goals in unserved areas and goal of fostering competition in “underserved” areas. Funding underserved areas as

⁶ PD, p. 16.

⁷ Section 5890.

⁸ PD, p. 30.

⁹ Id., pp. 19, 20

proposed in the PD is simply the wrong policy choice and not supported by either the record or the PD itself.

Unfortunately, the proposed CASF as described in the PD could allow unserved areas to remain unserved. First, there is no requirement, and thereby no guarantee, that any carrier will submit an application for funding in an unserved area. In this scenario, funding will be allocated to underserved areas and California consumers would be subsidizing a broadband provider's competitive entry where another provider has already made investments to provide services without subsidy, or just as problematic, the upgrade of an existing provider's broadband facilities. Second, funding both unserved and underserved areas allows the carriers, and not the Commission, to "prioritize" what projects will obtain funding. For example, if a carrier's service territory includes both unserved and underserved areas, such carrier may request funds only for the underserved areas and allow unserved areas to continue to go unserved. Third, funds not utilized by January 10, 2010 may be used to fund services at download speeds greater than 3 mbps.¹⁰ This proposed provision could incentivize carriers to again not submit applications for unserved areas. Instead, they may wait to see if any funding is available after 2 years and utilize any remaining funds to upgrade their networks to provide services with speeds even faster than 3 mbps/1 mbps in any part of their service territory.

A primary goal of the PD is to ensure that consumers in rural and remote areas will have access to broadband services, and thereby voice-grade services. The proposed CASF, however, would fail to achieve such goal because CASF-funding may never be allocated to such areas. Cox strongly recommends that the Commission limit CASF-funding to broadband deployment in unserved areas.

C. The Record Does Not Support The PD's Definition of Underserved Areas.

The PD effectively defines "underserved" areas as those areas where no facilities capable of providing 3 mbps download and 1 mbps upload speeds exist as such speeds are the "minimum necessary to effectively work from home."¹¹ Underserved areas are defined solely in terms of consumers

¹⁰ Id., p. 31.

¹¹ Id., p. 34.

telecommuting.¹² Yet, the PD includes no statistics on the number of people in California that currently telecommute, the percentage of any given population that is likely to telecommute (in any State or country), or the number or types of jobs that permit telecommuting, among other relevant data. Nor does the PD suggest that consumers in “underserved” areas do not have access to traditional voice services. The PD is silent on the necessary underlying support. Without underlying data relevant to the Commission’s universal service goals or the Legislature’s policies set forth in Section 709, the proposed benchmark speeds do not withstand scrutiny.

While the PD cites to foreign studies or other reports in support of its conclusion, these sources do not actually support the PD’s conclusion or are not readily available and subject to review. For example, the PD cites to the “compelling arguments” in favor of 1 mbps upload speed in a document that appears to be a Portuguese study from 2004. The PD, however, does not describe or even summarize what those compelling arguments are, and Cox could not readily find the cited study on the Internet.¹³ The PD also states that “another nation” already has 70% penetration of 1 mbps services and “a different nation” has 1/3 of its households with fiber based connections.¹⁴ These simple statements do not describe the population, the geographical size or terrain, the telecommunications marketplace, let alone the name, of the comparison countries. It appears that one of the countries is South Korea which is not only much smaller in terms of geographical size and population than California, but also distinguishable in that it is known to be one of the most densely populated countries in the world.¹⁵ Without a detailed analysis of the relevant facts underlying South Korea’s broadband deployment and that being proposed in California, the PD’s reliance on a single generic statistic is erroneous. The PD also relies on a “recent study in Europe” that supports a 1 mbps upstream and 7 mbps downstream speed for telecommuting. Surprisingly, there is no citation for this study.

¹² Id.

¹³ Id., p. 35, fn. 44.

¹⁴ Id, p. 35.

¹⁵ See, <http://www.state.gov/r/pa/ei/bgn/2800.htm>; <http://countrystudies.us/south-korea/> This country study of South Korea states it is slightly larger than the state of Indiana. <http://countrystudies.us/south-korea/29.htm>. And as of the late 1980s, the average population density was sixteen times the average population density of the United States. <http://countrystudies.us/south-korea/33.htm>

The PD also cites to two other sources for the proposition that the 3mbps download and 1 mbps upload speeds are necessary to ensure telecommuting is an option in all areas of the State. But a review of these sources demonstrates that neither supports the PD's finding. The Iowa State study generally supports the expansion of telecommuting, but it does not mention, let alone analyze, what speeds are necessary to effectively work from home. For example, the report states that broadband is faster than dial-up but generally refers to broadband and high-speed Internet access as both asymmetric DSL and cable-modem service without reference to any download or upload speeds.¹⁶ Similarly, the other source, a blog started in 2006, does not discuss telecommuting. The majority of this blog submission discusses whether consumers even notice the difference in download speeds and only mentions uplink speeds in passing in the last paragraph. In other words, there is no analysis demonstrating, let alone a discussion suggesting, that 1 mbps upload speed is necessary for telecommuting. Moreover, along with all the parties' comments in the record,¹⁷ this blog suggests that the minimum requirement of 3 mbps downstream is not necessary:

Can a consumer tell any difference between 1.5 megabit per second and four megabit per second service?" asks Bruce Leichtman, president of Leichtman Research Group, Inc. 'The answer is no.'¹⁸

And even if consumers could tell the difference, they may not get to experience it according to the same blog:

Websurfing runs at only about a megabit per second, and nearly everything else except downloading is effectively throttled down at the source. Downloading turns out to have some natural limits as well; at 100 Mbps, you can download enough music for 24 hours of listening in only four minutes per day. The practical result, confirmed by high speed leaders like Masayoshi Son of Yahoo BB in Japan, is that the faster speeds yield only a [sic] extremely modest increase in real traffic demand.¹⁹

¹⁶ *Broadband Access, Telecommuting and the Urban-Rural Digital Divide*, Moohoun Song, Peter Orazem, and Rajesh Singh, Technical Report 06-005, March 1, 2006, Office of Social and Economic Trend Analysis, Iowa State University Department of Economics, p. 2, fn.1. While the PD cites to a February 2006 working paper, the report was published on March 1, 2006.

¹⁷ The PD reflects that neither Verizon nor AT&T support the Commission adopting 3 mbps/1mbps as a requirement. PD, pp. 33-34. And other parties commenting noted that lower speeds would be satisfactory. PD, pp. 38-39.

¹⁸ <http://gigaom.com/2005/12/20/need-for-speed/>

¹⁹ Id.

The PD fails to substantiate the conclusion that underserved areas are those where no provider is offering 3 mbps/1 mbps speeds. Cox is troubled by the PD's reliance on sources that do not provide solid, persuasive support for its findings, especially in light of comments in the record that oppose the finding in the PD. Because the PD does not support the Commission imposing a surcharge on California telecommunications consumers to fund the deployment of broadband facilities where a broadband provider already exists, the Commission must modify the PD. If it adopts a CASF, such fund should be limited to providing support for projects deployed in unserved areas only.

III. If The Commission Determines That CASF Should Fund Projects in “Underserved” Areas, Then Such Funding Should Not Be Allocated To Carriers Upgrading Either Their Networks Or Their Affiliates’ Networks.

The Proposed Decision would allocate funding to encourage deployment of broadband facilities in both unserved and underserved areas, regardless of whether these areas are deemed “high costs” areas.²⁰ As discussed above, the PD lacks the necessary support to allocate surcharges collected from California telecommunications consumers to fund duplicative broadband networks. If however, the Commission determines that CASF monies will not be limited to projects in unserved areas (i.e. areas where there are no broadband providers), then the Commission must revise the PD to ensure that monies are available for entities operating in underserved areas on a competitively- and technology- neutral basis.

Under the PD, an applicant must show that an area is not being served by another provider offering services at or above the 3 mbps /1 mbps speeds.²¹ Cox recommends that this benchmark speed be significantly reduced to reflect existing DSL offerings. For example, AT&T's least-expensive DSL service offers 768 downstream and 384 upstream²² and Verizon's least-expensive DSL service offers 768 kbps downstream and 128 kbps upstream.²³ However, AT&T's most expensive DSL service offers upstream of 768 kbps, and similarly, Verizon's most expensive DSL offering offers 768 kbps upstream.

²⁰ PD, FOF No. 29; COL No. 11.

²¹ Id., p. 39.

²² See

<https://swot.sbc.com/swot/dslMassMarketCatalog.do?do=dslProductPage&offerId=154818&serviceType=DYNAM>
[ICIP.](#)

²³ See <http://www22.verizon.com/content/consumerdsl/plans/all+plans/all+plans.htm>

Notably, neither AT&T nor Verizon offer a DSL service that includes 1 mbps upstream to residential consumers.²⁴ It is also worth that cable-modem service providers offer entry-level residential broadband services throughout their respective service territories that match the entry-level DSL services offered by AT&T and Verizon.²⁵ Broadband service offerings that do not include upload speeds of 1 mbps -- whether provided by cable-modem providers or DSL -- are standard in the marketplace. Accordingly, areas in which these services are offered should not be deemed “underserved” areas eligible for subsidies generated from end-user surcharges.

Under the PD, areas where AT&T and Verizon are respectively the only broadband provider would all be deemed underserved areas and eligible for funds from CASF. This means that the ILECs, and only the ILECs, may utilize CASF funds to upgrade their networks. Certainly, it would be inappropriate for the Commission to utilize end-user surcharge money to fund ILEC broadband network upgrades on the premise that it is necessary to increase universal service or advance the use of telecommuting. While both universal service and telecommuting are worthy goals, without significant modification, the proposed CASF could spend a great deal of California consumer’s money collected from surcharges with little or no real effect in either area. Accordingly, Cox recommends that underserved areas exclude any area where at least one broadband provider offers service with at least 128 kbps upstream.

IV. The Commission Should Permit Telephone Corporations And Their Affiliates To Seek CASF Funding.

The PD concludes that only telephone corporations, as defined in Section 234, may apply and receive CASF funds.²⁶ Without any discussion or analysis, the PD arrives at this conclusion on the

²⁴ Verizon’s Power Plan includes 768 kbps upstream: <http://www22.verizon.com/content/consumerdsl/plans/all+plans/all+plans.htm>; AT&T’s Internet Pro service includes 512 kbps upstream: <https://swot.sbc.com/swot/dslMassMarketCatalog.do?do=dslProductPage&offerId=78168&serviceType=DYNAMI> CIP; AT&T’s Elite service includes 768 kbps upstream: <https://swot.sbc.com/swot/dslMassMarketCatalog.do?do=dslProductPage&offerId=90070&serviceType=DYNAMI> CIP.

²⁵ See, <http://www6.comcast.net/powerboost/>

²⁶ PD., p. 30.

grounds that it will “maximize the effectiveness of Commission oversight.”²⁷ This conclusion, however, is not consistent with the fact that most telephone corporations holding a CPCN do not provide broadband services directly but have an affiliate that offers such services. For example, Cox holds a CPCN but it offers only telecommunications services and its affiliate offers broadband services. All telephone corporations should have equal access to CASF funding without regard to the technology utilized to provide service. Cox proposes that the Commission modify the PD to state that affiliates of telephone corporations are eligible for funding from CASF and if awarded any CASF funds, they would be subject to the service commitments and audit requirements included in the final decision.²⁸

Further, CASF is premised on extending voice-grade services provided over broadband networks to those Californians who do not have access to such services. The PD properly concludes that such funding will not be available only to traditional wireline carriers. The Commission properly concludes that “it would be imprudent to continue to only support legacy copper networks of incumbent local exchange carriers.”²⁹ Cox submits that much of the innovation and promise for broadband in rural areas will likely come from non-PUC regulated entities.

By allowing affiliates of telephone corporations to apply for CASF funding, the Commission will further ensure the goals set forth in the PD are met without foregoing the Commission’s effective oversight of the CASF.

V. Conclusion.

Cox appreciates the Commission’s goal of ensuring that all Californians have access to voice-grade telephone service, as well as broadband services. The proposed CASF, however, is overbroad in scope and does not guarantee that consumers in rural and remote areas will actually gain access to such services. If the Commission adopts CASF, Cox respectfully requests that the Commission design and implement such fund to allocate monies to providers deploying networks in unserved areas only and that affiliates of telephone corporations be allowed to apply for such funding.

²⁷ Id.

²⁸ Id., pp. 40-41, 44-45.

²⁹ Id., p. 5.

Dated: December 10, 2007

Douglas Garrett
Cox Communications
2200 Powell St., Suite 1035
Emeryville, CA 94608
T: 510.923.6222
E: douglas.garrett@cox.com

Esther Northrup
Cox Communications
5159 Federal Blvd.
San Diego, CA 92105
T: 619.266.5315
E: esther.northrup@cox.com

Respectfully submitted,

/s/

Margaret L. Tobias
Mandell Law Group, PC
Three Embarcadero Center, Sixth Fl.
San Francisco, CA 94111
T: 415.869.6772
E: mtobias@mlawgroup.com
Attorney for Cox Communications

Exhibit A

Revised Findings of Fact, Conclusions of Law and Ordering Paragraphs

Revised Findings of Fact

4. The creation of a California Advanced Services Fund would provide an effective tool to promote additional broadband services in regions that are not served ~~or are underserved~~ consistent with Pub. Util. Code § 709(c) and (d).

11. Providing funding pursuant to Pub. Util. Code §§ 701 and 709 for deployment of broadband facilities in unserved ~~and underserved~~ high cost areas of California is necessary to meet the objectives of universal service.

15. It is appropriate to dedicate limited funding into the deployment of broadband facilities in unserved ~~and underserved~~ high cost areas of California.

18. An application process would be an appropriate procedural vehicle for seeking funding support for a proposed area that is currently unserved ~~or underserved~~ by broadband services.

21. California Advanced Services Fund allocations shall ~~not~~ be limited to a “telephone corporation” as defined under Pub. Util. Code § 234, and its affiliated broadband provider, if any.

22. Applicants shall be required to submit the following data to the Commission, for each proposed broadband project, subject to appropriate confidentiality provisions:

A. Description of applicant’s current broadband infrastructure and map of current service area by census block group;

B. Description of proposed broadband project plan for which CASF funding is being requested, including download and upload speed capabilities of proposed facilities. Minimum speed standards shall be ~~3 MBPS download and 1 MBPS~~ 1 MPBS download and 128 KBPS upload.

C. Geographic locations by census block group where broadband facilities will be deployed. Boundaries of the specific area to be served by the project, with map by census block group, along with a verifiable showing that the area is unserved ~~or underserved~~;

~~26. A 3 MBPS/1MBPS speed standard is adopted as the benchmark for evaluating applications.~~

29. California Advanced Services Fund awards will ~~not~~ be restricted only to unserved areas. ~~those areas currently designated as “high cost” for purposes of basic service support.~~

Revised Conclusions of Law

4. Limited funding for deployment of broadband facilities in unserved ~~and underserved~~ areas of California is necessary to meet the objectives of universal service and is within the prescribed purpose of Pub. Util. Code §§ 701 and 709.

9. California Advanced Services Fund allocations shall be limited to a “telephone corporation” as defined under Pub. Util. Code § 234 and its affiliated broadband provider, if any.

11. Subject to the final evaluation criteria, the Commission may award California Advanced Services Fund support to any certificated entity that proposes to build broadband infrastructure ~~anywhere in~~ any unserved area in the state.

Revised Ordering Paragraphs

~~7. CASF applications filed after June 2, 2008 will be accepted, but will be reviewed under a lower priority, and subject to the availability of remaining CASF funds after awards are made under applications that meet the June 2, 2008 filing deadline.~~

10. CASF funding shall be limited to entities with a certificate of public convenience and necessity (CPCN) that qualify as a “telephone corporation” as defined under Pub. Util. Code § 234 and required under §§ 276 and 739.3 and its affiliated broadband provider, if any.

DOCKET OFFICE

PROOF OF SERVICE

I, Margaret L Tobias, the undersigned, hereby declare that, on December 10, 2007, caused a copy of the foregoing:

**OPENING COMMENTS OF COX CALIFORNIA TELCOM, L.L.C.,
DBA COX COMMUNICATIONS ON COMMISSIONER CHONG'S
PROPOSED INTERIM OPINION IMPLEMENTING
CALIFORNIA ADVANCED SERVICES FUND**

in the above-captioned proceeding, to be served as follows:

- ☒ [X] Via email and US Mail to the Assigned Commissioner's Advisor
- ☒ [X] Via email and US Mail to Administrative Law Judge
- ☒ [X] Via email service to all parties included in the attached service

Dated: December 10, 2007 at San Francisco, California.

/s/

Margaret L. Tobias

Proceeding: R0606028 - CPUC - OIR INTO THE
Filer: CPUC
List Name: LIST
Last changed: November 20, 2007

ksaville@czn.com
Aloa.Stevens@frontier.com
jesus.g.roman@verizon.com
esther.northrup@cox.com
cmailoux@turn.org
elaine.duncan@verizon.com
rcosta@turn.org
bnusbaum@turn.org
ndw@cpuc.ca.gov
david.discher@att.com
michael.foreman@att.com
peter.hayes@att.com
Stephen.h.Kukta@sprint.com
thomas.selhorst@att.com
pcasciato@sbcglobal.net
jclark@gmssr.com
mtobias@mlawgroup.com
mschreiber@cwclaw.com
smalllecs@cwclaw.com
suzannetoller@dwt.com
ens@loens.com
tlmurray@earthlink.net
douglas.garrett@cox.com
lmb@wblaw.net
ll@calcable.org
pucservice@dralegal.org
scratty@adelphia.net
cborn@czn.com
beth.fujimoto@cingular.com
cindy.manheim@cingular.com
trevor@roycroftconsulting.org
john.frentrup@sprint.com
PHILILLINI@aol.com

don.eachus@verizon.com
jacque.lopez@verizon.com
mshames@ucan.org
marcel@turn.org
rudy.reyes@verizon.com
Kristin.L.Jacobson@sprint.com
mtobias@mlawgroup.com
jwiedman@goodinmacbride.com
deyoung@caltel.org
mmattes@nossaman.com
katienelson@dwt.com
anitataffrice@earthlink.net
mp@calcable.org
general@dralegal.org
joe.chicoine@frontiercorp.com
mcf@calcomwebsite.com
alk@cpuc.ca.gov
aba@cpuc.ca.gov
dgw@cpuc.ca.gov
gtd@cpuc.ca.gov
jjs@cpuc.ca.gov
kar@cpuc.ca.gov
lah@cpuc.ca.gov
mal@cpuc.ca.gov
nxb@cpuc.ca.gov
ncl@cpuc.ca.gov
psp@cpuc.ca.gov
rwc@cpuc.ca.gov
rwh@cpuc.ca.gov
trp@cpuc.ca.gov
tch@cpuc.ca.gov
randy.chinn@sen.ca.gov